Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of Verizon New Jersey Inc. and	)	WC Docket Nos. 13-149, 13-150
Verizon New York Inc. To Discontinue	)	
Domestic Telecommunications Services	)	Comp. Pol. File Nos. 1112, 1115

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its comments in response to the Federal Communications Commission's ("Commission") June 28, 2013 Public Notices seeking comment on Verizon's applications to discontinue specified domestic telecommunications services provided over facilities destroyed by Hurricane Sandy in certain portions of New York and New Jersey.[1] While Verizon's petitions are captioned as applications to "discontinue" service, Verizon effectively is asking to be relieved of the obligation to rebuild obsolete copper facilities that have already been destroyed by the hurricane.[2] ITTA supports Verizon's request.

As a general matter, in a situation where the facilities once used to provide voice service have been destroyed, rendered inoperable, or become obsolete and a carrier has concluded based

[1] "Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services," Public Notice, WC Docket No. 13-149, DA 13-1474 (rel. June 28, 2013); "Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services," Public Notice, WC Docket No. 13-149, DA 13-1475 (rel. June 28, 2013).

[2] Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., WC Docket No. 13-149 (filed May 24, 2013); Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., WC Docket No. 13-149 (filed June 7, 2013) ("Verizon Fire Island Application").

on sound business reasons that it is not economically rational to repair or replace them, the government cannot provide an unfunded mandate to do so. With the movement of the industry from TDM to IP, it would be irrational from a business standpoint to force a carrier to invest its private capital in rebuilding copper facilities that are being supplanted by newer technologies and services, including IP-based voice and data services.

With respect to Verizon's copper facilities in portions of Fire Island and nearby Barrier Island communities, the extent of the destruction from the hurricane has made repair or replacement of the damaged facilities completely impractical. Based on the severity of the destruction, rebuilding the damaged portions of Verizon's network "would require digging up the island's main road at repeated intervals," causing inconvenience to customers.[3] Furthermore, it is likely that such restoration attempts would only be temporary "given the prevalence of storms" and ongoing possibility of "ground and seawater contamination" in the affected areas.[4]

Under the circumstances, Verizon could never hope to recover the cost of restoring service in the affected areas over a reasonable period of time. According to Verizon's estimates, it would cost $4.8 to $6 million to restore wireline service to the approximately 500 affected

[3] *Id*. at 3-4.

[4] *Id*. at 4.

customer locations on Fire Island.[5] That translates to a cost of $9,600 to $12,000 *per customer location*.[6]

Given a general shift in customer demand away from access voice service to wireless, fiber, and IP-based alternatives, there would be no realistic opportunity for Verizon to recoup its investment in copper facilities. After conducting a study of voice traffic on the Fire Island, Verizon "discovered that 80 percent of the voice traffic was already wireless," and that the percentage was likely to be closer to 90 percent if other wireless providers were factored in.[7] Consistent with the trend occurring nationwide, there has been an overwhelming consumer preference in Fire Island to migrate from copper-based services to newer technologies. Based on this data, it was "clear [to Verizon] that people had already made the decision as to what technology works best. They had abandoned copper long before Sandy."[8]

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[5] "Guest Editorial: Verizon Remains Committed to Fire Island with Voice Link," *available at*: http://stopthecap.com/2013/06/19/guest-editorial-verizon-remains-committed-to-fire-island-with-voice-link/ (dated June 19, 2013) ("Verizon's analysis looked at the number of permanent residents on the island, which number about 500, and the costs that Verizon would incur to install and connect new landline facilities there. It would range from $4.8 million to more than $6 million.")

[6] In contrast, the Commission's concluded in the context of the Connect America Fund program that the per-location cap for receipt of Phase I support should be set at $775. *See In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 13-13 (rel. May 22, 2013), at ¶ 2. Furthermore, the Commission has repeatedly recognized that the economic burden associated with continuing to provide a service is an important factor in evaluating a request to discontinue provision of that service. *See, e.g.*, *In the Matter of Inquiry Into Problems of Public Coast Radiotelegraph Stations*, 67 F.C.C. 2d 790, 796 (1978); *In the Matter of AT&T Communications' Application to Discontinue Domestic Telecommunications Services*, 18 FCC Rcd 24376 ¶ 7 (2003); *In the Matter of Verizon Telephone Companies; Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, 18 FCC Rcd 22737 ¶ 10 (2003); *In the Matter of Section 63.71 Application of Sprint Communications Company L.P. for Authority to Discontinue Domestic Telecommunications Services*, 23 FCC Rcd 17048 ¶ 8 (2008).

[7] *See* Guest Editorial at 1.

[8] *Id.*

After evaluating various factors impacting its ability to provide service in the affected areas, Verizon concluded within its sound business discretion that "[a] multimillion dollar investment with no guarantee that residents of the island will even subscribe to our services makes no economic sense."[9] Indeed, it is unlikely that any rational business would voluntarily incur the cost of replacing obsolete network infrastructure under similar circumstances. The realities of today's marketplace simply do not make such an investment economically feasible. Wireline carriers increasingly compete head-to-head with multiple communications providers in the markets they serve, which restrains their ability to recover the costs of investing by raising rates in other areas or for other services. In the face of vibrant marketplace competition, any attempt by a wireline carrier to charge above-cost rates would prompt customers to switch to competing providers.

Moreover, if the Commission were to require reconstruction of network infrastructure in situations such as those in Fire Island without corresponding support, it would be completely antithetical to the its goal of facilitating the IP transition and deployment of next generation networks and services. As broadband deployment and adoption have become a primary focus of the Commission's regulatory agenda, the Commission's policies have continued to recognize the need to pursue a regulatory approach that facilitates the fundamental shift away from traditional wireline voice-centric technologies to next generation networks and services. As recognized in the National Broadband Plan, legacy regulations that require incumbent local exchange carriers ("ILECs") to maintain legacy copper networks are "not sustainable" because they reduce incentives for ILECs to deploy next generation facilities, "siphon[] investments away from new

[9] *Id.*

networks and services," and result in significant "stranded" investment in outdated facilities and technologies.[10]

The Commission must resist going down a path that would undermine its long-standing and important broadband policy objectives. In addition, the Commission must refrain from policies that would place ILECs at a competitive disadvantage in comparison to other providers who would not be subject to similar requirements. Subjecting wireline carriers to a requirement to replace outdated infrastructure when there is no business case to do so, and when their competitors would not be subject to similar requirements, would run counter to the Commission's policy preference for eliminating or refraining from adopting regulations that create competitive distortions in the marketplace.[11]

The Commission should also refrain from using Section 214 discontinuance applications as a forum for applying conditions to grant the application. The Commission seeks comment on "whether any conditions could ensure that the discontinuance of Verizon's wireline service does not harm the public interest."[12] Applying conditions to this process further exacerbates competitive distortions, as no competitors are required to make such concessions in order to discontinue service. Further, using conditions on a case-by-case discontinuance basis is bad policy because it creates uneven regulatory regimes and introduces further uncertainty into the process. Implementing carrier-specific policies is particularly inappropriate in this context, when the Commission is already struggling with the proper regulatory regime to transition from POTS

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[10] "Connecting America: The National Broadband Plan," at 59 (2010), *available at*: http://www.broadband.gov/.

[11] *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 53 (2007).

[12] Public Notice at 5.

to IP services, which are some of the core issues at stake in this instance. If the Commission were to apply conditions in this instance Verizon may well be left with a different regulatory regime for Fire Island than the rest of the industry as it completes the IP transition. These issues are too important to be decided on a one-off basis.

In sum, the Commission cannot, absent the provision of governmental support, require carriers to repair or replace legacy facilities that have been destroyed, rendered inoperable, or become obsolete when a carrier has concluded based on sound business reasons that it is economically irrational to do so. This determination would constitute an unfunded mandate that would inhibit investment in fiber deployment to increase broadband capacity, expand broadband availability, improve network quality and the customer experience, and facilitate future product innovation.

Respectfully submitted,

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